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LAMB & CABELL *v.* THOMPSON *et al.*

March 9, 1911.

[70 S. E. 507.]

1. Appeal and Error (§ 53*)—Burden of Proof—Amount in Controversy.—The burden is upon appellant to affirmatively show that the amount in controversy is sufficient to give the Supreme Court of Appeals jurisdiction of the appeal, as otherwise the appeal will be dismissed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 255; Dec. Dig. § 53.* 1 Va.-W. Va. Enc. Dig. 476.]

2. Appeal and Error (§ 715*)—Amount in Controversy—Record.—Where the record on appeal does not show the amount in controversy, so as to permit the Supreme Court of Appeals to take jurisdiction, appellant may file affidavit in such court showing the real amount in controversy.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2964, 2965; Dec. Dig. § 715.* 1 Va.-W. Va. Enc. Dig. 476.]

3. Appeal and Error (§ 50*)—Amount in Controversy.—In an action involving the amount paid by defendant for land purchased, the only issue was whether plaintiff or defendant should bear the loss caused by plaintiff's failure to present a certified check for \$300, given in payment of the land, to the bank on which it was drawn before it suspended business, and the trial court decided that the check was accepted by plaintiff and treated as a cash payment on the purchase price, and that he should bear the loss caused by the bank's failure because of his failure to present the check within a reasonable time. Dividends had been declared on the claim represented by the check held by plaintiff, aggregating \$112.50, which dividends were tendered to plaintiff pending this appeal. Held that, since the latter sum belonged to plaintiff when the decree appealed from was rendered, the loss sustained by plaintiff by his failure to present the check for payment would be only \$187.50, so that the Supreme Court of Appeals would not have jurisdiction of an appeal from such decree.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 233; Dec. Dig. § 50.* 1 Va.-W. Va. Enc. Dig. 477.]

Appeal from Circuit Court, Charlotte County.

Suit by Lamb & Cabell, receivers, against L. H. Thompson and others. From a judgment for defendants, plaintiffs appeal. Appeal dismissed.

John A. Lamb and M. M. Martin, for appellants.

Ro. F. Hutcheson, for appellees.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.